

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>EARL F. ELSTUN</b>	)	
Claimant	)	
VS.	)	
	)	
<b>GREIF, INC.</b>	)	Docket No. 1,018,524
Respondent	)	
AND	)	
	)	
<b>TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals the February 7, 2005 preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes. Claimant was awarded benefits after the Administrative Law Judge (ALJ) determined that claimant had suffered accidental injury arising out of and in the course of his employment and that timely notice was provided.

**ISSUES**

1. Did claimant suffer accidental injury arising out of and in the course of his employment?
2. Did claimant provide timely notice of accident?

The Board notes that the attorney for respondent advised at preliminary hearing that the only issue to be considered would be the lack of timely notice.<sup>1</sup> However, the ALJ, in her February 7, 2005 Order, specifically found that claimant was injured while working for respondent and that that injury arose out of and in the course of his employment. Additionally, the ALJ determined the issue of notice. The Request For Review by respondent lists both notice and whether an accidental injury arose out of and in the course

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<sup>1</sup> P.H. Trans. at 4.

of employment with respondent. Though not raised at preliminary hearing, the ALJ, having addressed the issue of causation, the Board will rule on same.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the ALJ should be affirmed.

Claimant, a flange press operator for respondent, was originally injured in January of 2004 when a heavy die, weighing approximately 300 pounds, fell unexpectedly. Claimant tried to catch the die, suffering significant injury to his left elbow. Claimant's elbow was dislocated and he suffered torn muscles in his left upper extremity. He underwent treatment for the condition and was under significant pain medication for at least a week. Claimant also testified that at the time of the incident, he experienced a sudden sharp pain in his mid groin area. However, claimant failed to advise respondent at that time of his groin pain.

Claimant recovered from the elbow injury and returned to work, performing his regular duties. Claimant testified that the condition in his groin, which was later diagnosed as a hernia, would periodically go out and claimant would be forced to push the protrusion back into its normal place with his hand. This went on for approximately six months, until on June 10, 2004, claimant was observed by his supervisor, Ron Blue, doubled over in pain. After advising Mr. Blue of the problem, claimant was advised to see a doctor, which he did. Claimant then underwent hernia repair surgery with Chandy Samuel, M.D. Claimant testified he was reluctant to advise respondent of the hernia problems because it is a type of condition that a man does not discuss. Claimant went onto note that he was embarrassed to even discuss the situation in front of the females at the preliminary hearing.

Claimant advised that the groin pain grew progressively worse over an approximate six-month period, to the point where he was forced to use his entire fist to force the hernia back into its appropriate location.

Respondent contends that claimant's injury in January 2004 to his elbow was the only notice provided, arguing that this omission was intentional on claimant's part. Claimant acknowledges he did not come forward with the information regarding the hernia due to his embarrassment. Claimant did, however, testify that the condition progressively worsened over a several-month period. Claimant has alleged a series of injuries in this matter beginning June 9, 2003, and every working day thereafter. The reason for the June 9, 2003 beginning date in this series is lost to the Board, as there was no testimony regarding any connection to June 9, 2003, with this incident. The only dates of significance

discussed by the parties are the January 2004 date and then the June 10, 2004 date, when claimant was observed by his supervisor. The Board will consider this to be a series-of-accidental-injuries claim beginning in January of 2004 forward, with the anticipation that some explanation will be provided at a later date regarding the unusual injury-date allegation provided by claimant.

In workers compensation litigation, it is the claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence.<sup>2</sup>

The only testimony in this matter was that provided by claimant. Claimant's testimony that his condition progressively worsened over a several-month period, culminating in the June 10, 2004 discussion with his supervisor, is uncontradicted. Uncontradicted evidence, which is not improbable or unreasonable, may not be disregarded unless it is shown to be untrustworthy.<sup>3</sup> Additionally, Dr. Samuel's Medical Information Supplement,<sup>4</sup> provided to Greif Brothers Corporation, answered in the affirmative the question whether the condition was due to injury or sickness arising out of the patient's employment. The Board finds a preponderance of the credible evidence in this matter supports claimant's contention that he suffered accidental injury arising out of and in the course of his employment, including the hernia condition.

K.S.A. 44-520 requires notice of accident be provided within 10 days of the date of accident. In this instance, the Board finds that claimant's accidental injury occurred as the result of a series of mini-traumas, beginning with the incident in January 2004, but worsening as claimant performed his regular job duties through June 10, 2004.<sup>5</sup> Therefore, notice of accident provided on that date to claimant's supervisor would satisfy the requirements of K.S.A. 44-520.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 7, 2005, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

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<sup>2</sup> K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508(g).

<sup>3</sup> *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

<sup>4</sup> P.H. Trans., Cl. Ex. 1 at 3.

<sup>5</sup> *Treaster v. Dillon Companies, Inc.*, 267 Kan. 610, 987 P.2d 325 (1999).

Dated this \_\_\_\_ day of April 2005.

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**BOARD MEMBER**

c: D. Shane Bangerter, Attorney for Claimant  
William L. Townsley, III, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director